

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

**Royer Cooper Cohen Braunfeld LLC**

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YALE UNIVERSITY,	)	Civil Action No. 13-_____
	)	
Plaintiff,	)	COMPLAINT
	)	
v.	)	
	)	
YALE ACADEMY, INC.;	)	
YALE ACADEMY NORTH WALES	)	
CAMPUS; YALE ACADEMY UPPER	)	
DARBY CAMPUS; YALE ACADEMY	)	
EDISON CAMPUS; YALE ACADEMY	)	
HOCKESSIN CAMPUS; YALE	)	
ACADEMY PLAINSBORO CAMPUS;	)	
YALE ACADEMY SECAUCUS	)	
CAMPUS, and JOHN DOES ONE through	)	
TEN, inclusive,	)	
	)	
Defendants.	)	

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Plaintiff Yale University ("Yale"), by and through its undersigned counsel, submits the following Verified Complaint against Defendants Yale Academy, Inc. ("Yale Academy"); Yale Academy, North Wales Campus ("North Wales"); Yale Academy, Upper Darby Campus ("Upper Darby"); Yale Academy, Edison Campus ("Edison"); Yale Academy, Hockessin Campus ("Hockessin"); Yale Academy, Plainsboro Campus ("Plainsboro"); Yale Academy,

Secaucus Campus ("Secaucus"); and John Does one through ten, inclusive (collectively, Defendants).

**PARTIES**

1. Plaintiff Yale is a famous university located in New Haven, Connecticut.
2. Yale is a not-for-profit corporation established by charter with the colony and state of Connecticut, with its corporate address at 105 Wall Street, New Haven, Connecticut, 06520.
3. Defendant Yale Academy is a New Jersey company with its main office at 1212 Haddonfield Road, Cherry Hill, New Jersey, 08002.
4. Defendant North Wales is a Pennsylvania company located at 1218 Welsh Road, North Wales, Pennsylvania, 19454.
5. Defendant Upper Darby is a Pennsylvania company located at 7030 Terminal Square, Upper Darby, Pennsylvania, 19082.
6. Defendant Edison is a New Jersey company located at 52 Lincoln Highway, Edison, New Jersey, 08820.
7. Defendant Hockessin is a Delaware company located at 1127 Valley Road, Hockessin, Delaware, 19707.
8. Defendant Plainsboro is a New Jersey company located in the Holiday Inn Express Conference Center, at 800 Scudders Mill Road, Plainsboro, New Jersey, 08536.
9. Defendant Secaucus is a New Jersey company located in the Embassy Suites Secaucus, at 455 Plaza Drive, Secaucus, New Jersey, 07094.
10. Yale does not know the true names and capacities of the Defendants sued herein as John Does one through ten, inclusive, and therefore sues these Defendants by such fictitious

names. Yale will amend this Complaint to allege the true names and capacities of these Defendants if it ascertains the same.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction pursuant to the Lanham Act of the United States, 15 U.S.C. § 1125 *et seq.* and 15 U.S.C. § 1119. This action also arises under the declaratory judgment statute, 28 U.S.C. §§ 2201 and 2202. This Court also has jurisdiction under 28 U.S.C. § 1367 over Plaintiff's related state law claims.

12. This Court has personal jurisdiction over Defendants because, upon information and belief, Defendants do business in this judicial district, including the business out of which this action arises, and/or have ongoing and systematic contacts with this judicial district. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c).

### **BACKGROUND<sup>1</sup>**

13. Yale is a leading university, founded in 1701, and located in New Haven, Connecticut.

14. Yale has been known as Yale College or Yale University since the early 1700's. Many distinguished leaders in government, academia, science, and business are Yale alumni, including three of the past four United States Presidents.

15. In addition to being the third oldest institution of higher education in the United States, Yale is also one of the most exclusive. Out of the 28,975 applications for admission in 2012, Yale accepted only 6.8%.

16. Yale's reputation as a prestigious and elite university resonates not only in the United States, but around the world, and especially in Asia.

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<sup>1</sup> All facts herein regarding Defendants are based upon information and belief.

17. Yale supports strong ties with Asia, dating back to the founding of the Yale-China Association in 1901. Among its many programs, the Yale-China Association sponsors recent Yale graduates to teach English at Chinese secondary schools and universities.

18. Yale also offers academic programs for high school students, including the Yale Young Global Scholars program, formerly known as the Ivy Scholars Program. This pre-college program offers a selective and academically rigorous summer experience for high school students.

19. Yale owns world-famous YALE and YALE UNIVERSITY trade and service marks, (the Yale Marks) such as U.S. Trademark Registration Nos. 1391903, 1391926, and 3677799, for use in the field of higher education services, medical services, and licensed collateral goods such as clothing, sporting equipment, and other typical licensed goods. Yale owns over 30 U.S. Federal Trademark registrations consisting of or containing the term YALE. The marks are also protected in numerous foreign countries. Copies of some of the federal registrations are attached hereto as Exhibit A.

20. Since the early 1700's, the Yale marks have been in use in the United States and subsequently throughout the world.

21. Over the course of more than 300 years since the founding of Yale University, the name YALE has come to represent one of the most well-known and prestigious universities in the world. The Yale Marks and the goodwill and reputation that they have come to represent are among the most valuable of Yale's assets.

22. Yale operates a website found at [www.yale.edu](http://www.yale.edu), ("Yale's Website" or "Plaintiff's Website"), which provides information about the university, including admissions information for interested applicants.

23. Yale uses its YALE mark and the distinctive blue and white colors on its website, and on collateral goods such as t-shirts, mugs, golf balls, and other promotional items. Yale earns significant revenue from licensing its marks on these goods.

24. Yale's website is an important part of its ability to provide information to alumni, applicants, students, and employees.

25. Yale is a member of The Ivy League, a group of eight distinguished Universities with highly selective admissions: Yale, Harvard, Princeton, Brown, Dartmouth, Cornell, Columbia, and the University of Pennsylvania.

26. The term "Ivy League" is often used to refer to one or more of this group of highly selective Universities.

27. Yale draws students from all over the United States and abroad. A significant number of Yale students come from New Jersey.

28. Yale recently discovered that the Defendants are impersonating Yale in a calculated and deliberate scheme to confuse consumers as to the association of Yale with Defendants' college admissions preparation services. On information and belief, the John Doe Defendants own and operate the entity Defendants, through which this scheme is carried out.

29. Yale Academy operates a company out of Cherry Hill, New Jersey, offering college admissions testing preparation, tutoring, and college application consulting services.

30. In conjunction with the name Yale Academy, Defendants make numerous references to the Ivy League and also make a number of statements designed to indicate that Ivy League admission is guaranteed to students in their programs.

31. The use of Yale Academy along with numerous references to the Ivy League enhances the likelihood that customers will assume a connection between Defendants and Yale, an Ivy League University.

32. Defendants are also operating a website at [www.yaleacademy.com](http://www.yaleacademy.com), (the “Infringing Website”). Yale Academy’s domain name and website, including Yale Academy’s use of Yale’s blue and white colors, are deliberately designed to, and will, confuse customers and cause them to mistakenly believe that the domain name and website are sponsored by Yale.

33. Defendants’ website prominently displays photos of Ivy League college campuses, including Yale University, increasing the likelihood of confusion with a Yale-sponsored website.

34. Defendants’ services appear to be targeted specifically at Asian families for whom English is not a primary language. Defendants’ sign at the Cherry Hill location prominently displays both English and Korean. Defendants’ website is also available in Chinese and Korean.

35. Defendants’ website also displays full page advertisements from Korean and Chinese language newspapers advertising their services.

36. In addition, Defendants offer an “Overseas Study” program for students in other countries “who wish to enter Ivy League schools.” This program offers tours of Ivy League campuses, including Yale University.

37. The description of the “Overseas Study Program without Boarding” on Defendants’ website is only available in Chinese, and not in English, targeting native speakers of Chinese.

38. Ivy League admission is an important goal for many students from Asian countries. For example in 2008, the New York Times wrote about special schools in Korea whose goal is sending students to prestigious U.S. colleges, and in 2009, the New York Times wrote about a very strong interest of the Chinese middle-class in admission to elite U.S. Universities.

39. Defendants' website is rife with unsubstantiated claims regarding their college admissions testing preparation services. For instance, Defendants claim that purchase of their services will guarantee an SAT score improvement of 400 points and a minimum score of 2200 on the college entrance exam.

40. Defendants' website also states, with respect to its overseas study program with boarding, "We guarantee that with this program, the student can enter Ivy Leagues [sic] schools."

41. Defendants also offer a consulting service to prepare college applications, called "IVY Plus Membership." Defendants' website promises that the "Membership will provide you the acceptance letter" to one of the "Top 45 Universities and Colleges."

42. Recently, in May of 2012, Defendants' website began offering franchising opportunities to stake out new locations of Yale Academy across the country.

43. Between May and September of 2012, four new locations in Delaware and New Jersey have sprung up, including Defendants Edison, Hockessin, Plainsboro, and Secaucus.

44. As a part of this recent expansion, on March 5, 2013, Yale Academy applied for U.S. Trademark Application Serial Nos. 85/867147 and 85/867169 for the marks Yale Academy and the Yale Academy logo for use in the field of education services.

45. The potential damage to Yale's reputation is imminent and irreparable.

46. Consumers, and especially the non-native speakers targeted by the Defendants, are likely to be confused as to the association of the Defendants' college admissions preparation services with Yale.

47. By causing a likelihood of confusion, the Defendants have knowingly and unlawfully misappropriated a portion of the value of the Yale Marks and their associated

goodwill for the Defendants' own use and profit. This mistaken association inures to the benefit of the Defendants.

48. The likelihood of confusion caused by the Defendants will cause substantial and irreparable harm to Yale. The Defendants are directly and irreparably damaging one of Yale's most valuable assets—its goodwill and reputation.

**COUNT ONE**

**(Unfair Competition, False Association, and Common Law Trademark Infringement in Violation of 15 U.S.C. § 1125(a)(1)(A))**

49. Yale incorporates the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

50. This cause of action is for unfair competition, false association, and common law trademark infringement under 15 U.S.C. § 1125(a)(1)(A).

51. Through their misappropriation of the YALE name, Defendants have likely caused, and if not enjoined will continue to cause, consumers in this judicial district and elsewhere to be confused, mistaken, or deceived as to the affiliation, connection or association of the Defendants' questionable prep course for college admissions testing and false guarantees of admission to an Ivy League college with those of Yale, and Yale's sponsorship or approval of the Defendants' activities.

52. Yale owns trademark and service mark rights in the marks YALE and YALE UNIVERSITY. Defendants' use of YALE is likely to confuse consumers, in this judicial district and elsewhere, as to the source or sponsorship of Defendants' services, causing consumers to associate Defendants' questionable prep courses with Yale.



53. Defendants' misappropriation of Yale's trademarks and service marks is likely to cause significant harm to Yale, including irreparable harm for which there is no adequate remedy at law.

54. Upon information and belief, Defendants' conduct is both knowing and willful.

**COUNT TWO**

**(Trademark Infringement in Violation of 15 U.S.C. § 1114(a))**

55. Yale incorporates the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

56. This cause of action is for infringement of Yale's registered trademark rights under 15 U.S.C. § 1114(a).

57. Through their use of the term Yale, Defendants have used a reproduction, counterfeit, copy or colorable imitation of the registered YALE mark in connection with the offering of services in commerce and thereby have caused, and if not enjoined, will continue to cause, a likelihood that consumers in this judicial district, and elsewhere, will be confused, mistaken, or deceived.

58. Yale owns incontestable trademark rights in the YALE and YALE UNIVERSITY marks, which have been in use since the early 1700's, after Yale's founding in 1701.

59. Defendants' misappropriation of the registered YALE mark will cause significant harm to Yale, including irreparable harm for which there is no adequate remedy at law.

60. Defendants' willful and unauthorized misuse of the registered YALE mark will damage Yale in an amount to be determined at trial. Such use will also cause Yale to suffer irreparable harm, and Yale is likely to continue to be irreparably harmed unless and until Defendants' unlawful conduct is enjoined. Yale has no adequate remedy at law.

61. Upon information and belief, Defendants' conduct is both knowing and willful.

**COUNT THREE**

**(Cybersquatting in Violation of The Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d))**

62. Yale incorporates the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

63. This cause of action is for violation of The Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), (“ACPA”). The ACPA provides a cause of action against a person who, with a bad faith intent to profit, registers, or uses or traffics in an Internet domain name that is identical or confusingly similar to a distinctive mark.

64. The YALE trademark is distinctive and was distinctive at the time of the original registration and the time of Defendants’ acquisition of the www.yaleacademy.com domain name.

65. Defendants’ domain name, www.yaleacademy.com, contains the word “YALE,” which is identical to Plaintiff’s registered YALE trademark.

66. Www.yaleacademy.com was registered and is being used with the bad faith intent to profit from the goodwill of the YALE trademark in the United States and elsewhere.

67. Www.yaleacademy.com is being used with the bad faith intent to operate a questionable prep course for college admissions testing under the umbrella of Yale’s distinguished reputation.

68. Upon information and belief, Defendants are fully aware that they have no rights or purported rights to divert consumers who are looking for information about Yale.

69. By reason of Defendants’ acts set forth above, Yale believes it is or will be injured in its business, property, reputation and goodwill. The injury to Yale is and continues to be immediate and irreparable.

70. As such, Yale is entitled to recover complete ownership and control of the domain name registration for www.yaleacademy.com.

71. Yale is also entitled to statutory damages of up to \$100,000 pursuant to 15 U.S.C. § 1117(d) for the bad-faith use of www.yaleacademy.com.

#### **COUNT FOUR**

##### **(Unfair Competition under New Jersey Common Law)**

72. Yale incorporates the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

73. This cause of action is for unfair competition and unfair business practices contrary to the common laws of the United States and the State of New Jersey.

74. The aforesaid infringement by Defendants was committed willfully, knowingly, maliciously, and in conscious disregard of Yale's rights.

75. The aforesaid infringement by Defendants has caused, and unless restrained by this Court will continue to cause immediate and irreparable injury and harm to Yale.

76. Yale has no adequate remedy at law.

#### **COUNT FIVE**

##### **(Unfair Competition Under N.J.S.A. §§ 56:4-1 *et seq.*)**

77. Yale incorporates the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

78. This cause of action is for unfair competition through Defendants' appropriation for their own use of the name, brand, trademark, reputation, and goodwill of Yale in violation of N.J.S.A. §§ 56:4-1 *et seq.*

79. The aforesaid infringement by Defendants was committed willfully, knowingly, maliciously, and in conscious disregard of Yale's rights.

80. The aforesaid infringement by Defendants has caused, and unless restrained by this Court will continue to cause immediate and irreparable injury and harm to Yale.

81. Yale has no adequate remedy at law.

**COUNT SIX**

**(Violation of The New Jersey Consumer Fraud Act Under N.J.S.A. §§ 56:8-2 *et seq.*)**

82. Yale incorporates the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

83. This cause of action is for violation of the New Jersey Consumer Fraud Act Under N.J.S.A. §§ 56:8-2 *et seq.*

84. The aforesaid acts by Defendants were committed willfully, knowingly, maliciously, and constitute unlawful acts and unconscionable commercial practice and misrepresentations in violation of the New Jersey Consumer Fraud Act.

85. The aforesaid acts by Defendants have caused, and unless restrained by this Court will continue to cause immediate and irreparable injury and harm to Yale.

86. Yale has no adequate remedy at law.

**COUNT SEVEN**

**(Unjust Enrichment)**

87. Yale incorporates the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

88. This cause of action is for unjust enrichment under common law.

89. As a result of Defendants' acts alleged above, Defendants have enjoyed gains, profits, benefits, revenues, and advantages that they would not otherwise have enjoyed or received due to their use of the Yale Marks without authorization or permission from Yale.

90. These gains, profits, benefits, revenues, and advantages were gained at Yale's expense and do not rightfully belong to Defendants.

91. The amount of gains, profits, benefits, revenues, and advantages wrongfully realized by Defendants from their acts as alleged herein is unknown to Yale. Yale is entitled as a matter of equity to restitution of those gains, profits, benefits, and revenues wrongfully realized by Defendants.

### **PRAYER FOR RELIEF**

WHEREFORE, Yale respectfully requests that this Court enter judgment in Yale's favor and against Defendants, as follows:

1. Yale requests that this Court grant a preliminary and permanent injunction pursuant to the powers granted under 15 U.S.C. § 1116, enjoining and restraining Defendants, their officers, agents, servants, and employees, and those persons in active concert or participation with them, from directly or indirectly using any trademark containing or consisting of the term YALE, or any confusingly similar variation thereof, which is likely to cause confusion, mistake, or to deceive.
2. Yale requests that the Court direct the United States Patent and Trademark Office to deny Yale Academy's U.S. Trademark Applications, Serial Nos. 85/867147 and 85/867169, pursuant to 15 U.S.C. § 1119.
3. Yale requests relief in the form of an accounting by Defendants of all gains, profits and advantages derived from their unlawful activities, such amount to be trebled pursuant to 15 U.S.C. § 1117(a) by virtue of Defendants' unlawful conduct.

4. Yale requests relief in the form of an award of compensatory and punitive damages in an amount to be proven at trial, such amount to be trebled pursuant to 15 U.S.C. § 1117(a) by virtue of Defendants' willful conduct.

5. Yale requests relief in the form of an award of costs, including reasonable attorneys' fees, by virtue of the exceptional circumstances of this case and/or because of Defendants' willful conduct.

6. Yale requests an award of \$100,000 statutory damages for cybersquatting.

7. Yale requests that the Court order the transfer of the domain name registration www.yaleacademy.com to Yale, and that the Court order the transfer of all relevant passwords, user IDs and other information necessary to effect immediate control over the domain name registration www.yaleacademy.com.

8. Yale requests that the Court order Defendants to destroy all signage, advertising and promotional materials containing the terms Yale or Yale Academy.

9. Yale requests that this Court grant Yale such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: 5/8/2013

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**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither Plaintiff nor Plaintiff's attorneys are aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject.

Respectfully submitted,

Dated: 5/8/2013

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